

IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER No. 575 of 2006

WITHH

CIVIL APPLICATION NO. 747 OF 2006

In

APPEAL FROM ORDER NO.575 OF 2006

Shri Mohammed Ibrahim Jokhu .. Appellant

versus

Mohammed Naim Khan Yasin Khan

and others .. Respondents

...

Ms.Anita G. Bhaktwani for the appellant.

Mr.Sandesh Patil for respondent no.1.

Mr.S.L. Kanuga for respondent nos. 3 to 6.

Mr.Jadhav i/b Mr.Nitin Jamdar for respondent no.9.

CORAM : D.G. KARNIK, J

DATED : 27th November 2006

P.C.:

1. Heard counsel for the appearing parties.

Arguable case is made out. Hence, appeal is admitted.

2. As regards the interim relief, the trial court has granted the injunction restraining the appellant from disturbing the possession of the respondents.

3. The appellant is the owner of the property. Respondent no.1 has filed the suit for specific performance of an agreement of sale dated 16th November 1996. The respondent no.1 has claimed injunction restraining the appellant from disturbing his possession of the suit property alleging that he is in possession. The agreement of sale does not recite of the possession ever been handed over to the respondent no.1. Counsel for the respondent no.1 however submitted that respondent was already in possession of the suit property since the year 1994 as a trespasser and that possession was confirmed under the agreement of sale. I have perused the agreement of sale dated 16th November 1996. The agreement does not recite that respondent no.1 was in possession of the suit property prior to the agreement of sale as a trespasser or in any other capacity. Prima facie, there is no material on record to show that the respondent no.1 is in lawful possession of the suit property, to enable him to claim an injunction.

4. Assuming the case of respondent no.1 to be true, at best, it would show that the respondent no.1 is claiming possession as a trespasser and not under the suit agreement. He, therefore, is not entitled to an injunction against the true owner of the property.

5. It may be said that out of the agreed consideration of Rs.9 lakhs, he has paid a partly sum of Rs.1,10,000/- and the major consideration has not been paid though 10 years have passed since the agreement. In the circumstances, the equities are not in favour of the respondent no.1. Hence on that ground also, the respondent no.1 is not entitled to an injunction.

6. For these reasons, the operation of the order passed by the trial court is stayed pending the hearing and disposal of the appeal.

7. Civil Application is disposed of.

D.G. KARNIK, J